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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re

Case No. 07-13481-A-7K
DC No. KDG-2

SETH PATRICK LANTZ

Debtor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
RE TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION FILED BY DEBTOR
AND REQUEST FOR TURNOVER OF FUNDS BY DEBTOR

A hearing on the trustee's objection to the debtor's claim of exemption and the trustee's request for turnover of funds was held on October 29, 2008. Following the hearing, the court took the matter under submission. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(B). These findings of fact and conclusions of law replace the findings of fact and conclusions of law stated on the record at the hearing held December 16, 2008.

When Lantz filed his bankruptcy petition in October 2007, he filed Schedule C, claiming exemptions. The exemptions claimed did not include an exemption in earned but unpaid wages. On December 6, 2007, Lantz filed an amended Schedule C, which simply changed the value of his exemption in real property. On August

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1 1, 2008, he again amended Schedule C. This time, the amended
2 Schedule C claimed an exemption in "earned but unpaid wages."
3 The exemption was claimed under 15 U.S.C. § 1673. In addition to
4 the earned but unpaid wages, Lantz continued to claim exemptions
5 under California Code of Civil Procedure § 703.140(b)(1), (2),
6 (3), and (5).

7 The trustee and the debtor then entered into a stipulation
8 granting the trustee an additional thirty days from the filing of
9 the amended exemptions to object to the amended exemptions.
10 Within that extended time, the trustee filed his objection to the
11 debtor's claim of exemptions. The debtor opposed the objection,
12 and a hearing was held.

13 The trustee argues that when a debtor elects to use the
14 exemptions provided by California Code of Civil Procedure
15 703.140(b), the debtor may not then use additional exemptions.
16 According to the trustee:

17 "If section 703.140 is the scheme that allows Debtor to keep
18 the most property, by the very language of 703.140 Debtor is
19 limited to the exemptions found within that chapter and
20 within that section. Permitting Debtor to use 'any
21 exemption that may be available to the debtor outside the
22 exemption chapter of the Civil Code' flies in the face of
23 California's bankruptcy exemption scheme and should not be
24 allowed."

25 (Trustee's Reply filed October 30, 2008, at page 4.)

26 The debtor argues that the trustee misinterprets the
27 language of California Code of Civil Procedure § 703.140(a). The
28 debtor further argues that the trustee's position violates the
Supremacy Clause of the United States Constitution.

Bankruptcy Code § 522 provides for exemptions in bankruptcy
cases. Section 522(b) provides that debtors may choose between

1 two sets of exemptions. First, debtors may choose exemptions
2 under § 522(b)(2). This allows the debtor to exempt the property
3 specified under § 522(d). That subsection lists specific
4 property that may be exempted in a bankruptcy case.

5 Alternately, debtors may choose to exempt the property
6 described at 11 U.S.C. § 522(b)(3). This choice allows debtors
7 to exempt any property that is exempt under federal law other
8 than subsection (d) and to exempt property that is exempt under
9 state law applicable to the debtor.

10 There is a caveat to these two choices. That caveat is
11 found at § 522(b)(2), which provides that exempt property
12 consists of the property specified under subsection (d) "unless
13 the State law that is applicable to the debtor . . . specifically
14 does not so authorize."

15 And that caveat is significant for debtors in California
16 because California law specifically does not so authorize.

17 California Code of Civil Procedure § 703.140(a) states:

18 "If a petition is filed under Title 11 of the United States
19 Code, the exemptions provided by this chapter other than the
20 provisions of subdivision (b) of this section shall be
21 applicable, but the exemptions provided by subdivision (b)
22 may be elected in lieu of all other exemptions provided by
23 this chapter"

24 Thus, persons to whom California law applies may not choose
25 the exemptions listed at 11 U.S.C. § 522(d). They are limited to
26 the choices described at California Code of Civil Procedure
27 § 703.140. Section 703.140(b) lists exemptions that largely
28 track the exemptions listed at 11 U.S.C. § 522(d).

29 In this case, the debtor chose the exemptions listed at
30 California Code of Civil Procedure § 703.140(b). Additionally,

1 he chose to exempt earned but unpaid wages. There is no listed
2 exemption for earned but unpaid wages at California Code of Civil
3 Procedure § 703.140(b). Instead, any exemption for earned but
4 unpaid wages stems initially from 15 U.S.C. § 1673(a). Section
5 1673(a) states, with exceptions not relevant here:

6 "The maximum part of the aggregate disposable earnings of an
7 individual for any work week which is subjected to
8 garnishment may not exceed (1) 25 per centum of his
9 disposable earnings for that week, or (2) the amount by
which his disposable earnings for that week exceed thirty
times the Federal minimum hourly wage . . . in effect at the
time the earnings are payable, whichever is less"

10 California has incorporated § 1673 into its scheme for
11 exemptions from enforcement of money judgments. California Code
12 of Civil Procedure § 706.050 states:

13 "Except as otherwise provided in this chapter, the amount of
14 earnings of a judgment debtor exempt from the levy of an
15 earnings withholding order shall be that amount that may not
16 be withheld from the judgment debtor's earnings under
federal law in Section 1673(a) of Title 15 of the United
States Code."

17 So, the issue is framed. May a debtor to whom California
18 law applies utilize the exemptions provided by California Code of
19 Civil Procedure § 703.140(b) and also claim an exemption in
20 earned but unpaid wages under California Code of Civil Procedure
21 § 706.050 incorporating 15 U.S.C. § 1673(a)? Answering this
22 question requires close attention to the language of these
23 statutes. In particular, it is necessary to interpret §
24 703.140(a). What does the language "the exemptions provided by
25 subdivision (b) may be elected in lieu of all other exemptions
26 provided by this chapter" mean? (Emphasis added.)

27 The California Code of Civil Procedure is organized, in
28 descending order, into parts, titles, divisions, and chapters.

1 Section 703.140 is found in Article I ("General Provisions") of
2 chapter 4 ("Exemptions") of Division 2 ("Enforcement of Money
3 Judgment") of Title 9 of Part 2 of the Code of Civil Procedure.
4 Thus, when § 703.140(a) refers to "provided by this chapter," it
5 is reasonable to conclude that "this chapter" means chapter 4.

6 In contrast, § 706.050 is found in chapter 5 ("Wage
7 Garnishment") of Division 2, Title 9, Part 2. Because the wage
8 garnishment exemption of § 706.050 is in a different chapter from
9 § 703.140, the language "all other exemptions provided by this
10 chapter" cannot apply to § 706.050.

11 Thus construed, § 703.140(a) allows debtors in bankruptcy
12 cases to make choices with reference to the exemptions provided
13 by chapter 4. They can either choose the exemptions of §
14 703.140(b) or they can choose the other exemptions provided in
15 chapter 4.

16 Section 703.140(a) says absolutely nothing about the
17 exemptions provided by other chapters of the California Code of
18 Civil Procedure. The wage garnishment exemption provided by
19 § 706.050 is entirely outside the purview of § 703.140. Thus,
20 there is nothing in the language of § 703.140(a) that precludes
21 California debtors from choosing the exemptions of § 703.140(b)
22 and the exemption provided by § 706.050.

23 And, in fact, public policy supports this reading. When
24 Congress enacted 15 U.S.C. § 1673, it made specific findings
25 which are set forth at § 1671(a). Those findings are:

26
27 "The Congress finds:

28 (1) The unrestricted garnishment of compensation due
for personal services encourages the making of predatory

1 extensions of credit. Such extensions of credit divert
2 money into excessive credit payments and thereby hinder the
production and flow of goods in interstate commerce.

3 (2) The application of garnishment as a creditors'
4 remedy frequently results in loss of employment by the
debtor, and the resulting disruption of employment,
5 production, and consumption constitutes a substantial burden
6 on interstate commerce.

7 (3) The great disparities among the laws of the several
8 States relating to garnishment have, in effect, destroyed
9 the uniformity of the bankruptcy laws and frustrated the
10 purposes thereof in many areas of the country."

11 Federal Rule of Bankruptcy Procedure § 4003(c) gives the
12 objecting party the burden of proving that exemptions are not
13 properly claimed. Thus, the trustee has the burden of proof
14 here.

15 Under the Bankruptcy Code and under California law,
16 exemptions are to be construed broadly and liberally in favor of
17 the debtor. In re Gardiner, 332 B.R. 891, 894 (Bankr. S.D. Cal.
18 2005).

19 The ability to claim exemptions is a fundamental component
20 of a debtor's fresh start in bankruptcy. 4 Collier on Bankruptcy
21 p. 522-15 (15th ed. Rev. 2008). The ability to exempt earned by
22 unpaid wages is crucial to a debtor's fresh start.

23 For the above reasons, the trustee's objection is overruled,
24 and the trustee's request for turnover is denied. The court will
25 issue a separate order.

26 DATED: January 13, 2008.

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28

WHITNEY RIMEL, Judge
United States Bankruptcy Court

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within above-entitled action; my business address is 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721.

On January 13, 2008, I served the within document on the interested parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Fresno, California, addressed as follows:

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I certify (or declare), under penalty of perjury, that the foregoing is true and correct. Executed on January 13, 2008, at Fresno, California.


Kathy Torres PLS